

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

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| JACKIE VICTOR ADAMS, |) | |
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| Petitioner, |) | |
| |) | |
| |) | |
| v. |) | Case No.: 2:15-cv-235 |
| |) | |
| |) | |
| ERIC D. WILSON, Warden, |) | |
| |) | |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |

FINAL ORDER

Before the Court is a Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241. ECF Nos. 1 and 7.¹ In his Petition, the *pro se* Petitioner alleged that he was sentenced under a provision of the Armed Career Criminal Act (“ACCA”) that is now unconstitutional based on *Johnson v. United States*, 135 S.Ct. 2551 (June 26, 2015). On January 11, 2016, the United States Attorney for the Eastern District of Virginia, on behalf of the Respondent, filed a Motion to Dismiss for Lack of Jurisdiction. ECF No. 9. This case was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72(b), and Local Civil Rule 72 for a report and recommendation. The Report and Recommendation was filed on February 19, 2016, and the Magistrate Judge recommended the Petition be dismissed without prejudice for lack of jurisdiction. ECF No. 15. By receiving a copy of the Report and Recommendation, the parties were advised of their right to file written

¹ Adams filed his 28 U.S.C. § 2241 petition in the Eastern District of North Carolina on January 20, 2015. ECF No. 1. The case was transferred to the Eastern District of Virginia on June 3, 2015, because the proper venue for a § 2241 petition is the district in which the petitioner is in custody. *See* 28 U.S.C. § 2241(a). On June 26, 2015, the Court ordered Adams to file an amended petition on the proper Form (AO 242(12/11)). ECF No. 6. Adams filed an amended petition on July 17, 2015. ECF No. 7.

objections to the Magistrate Judge's findings and recommendations. *Id.* at 9. Neither party filed an objection.

The Court, having reviewed the record with no objections, agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Magistrate Judge's Report and Recommendation filed on February 19, 2016, ECF No. 15, in its entirety as the Court's own opinion. It is, therefore, **ORDERED** that the Petition, ECF No. 7, be **DISMISSED WITHOUT PREJUDICE**. Moreover, it appears the parties dispute whether Petitioner's sentence was originally enhanced based on prior "violent felonies" or "serious drug offenses." This Court has no information before it as to whether Adams' sentence was definitively enhanced under § 924(e)(2)(B) or § 924(e)(2)(A). Therefore, Petitioner may have a claim for relief under *Johnson v. United States*, 135 S.Ct. 2551 (June 26, 2015), which does apply retroactively, *see Welch v. United States*, No. 15-6418, ___ U.S. ___ (April 18, 2016) (slip op.) (holding that the Court's decision in *Johnson* was a new substantive rule of law that applies retroactively in cases on collateral review), or under *United States v. Newbold*, 791 F.3d 455 (4th Cir. June 30, 2015) (applying *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc), to evaluate whether a prior conviction is a "serious drug offense" implicating an enhancement of a defendant's sentence under the ACCA). Accordingly, **PETITIONER IS ADVISED** that he must file a § 2255 petition in the district in which he was sentenced, delineating his prayer for relief pursuant to *Johnson* before June 26, 2016, or pursuant to *Newbold* before June 30, 2016. *See* 28 U.S.C. § 2255(f)(3). Further, because this may be a successive habeas petition, Petitioner must still also seek a certificate of appealability from the Fourth Circuit (attached).

The Petitioner may appeal from the judgment entered pursuant to this Final Order by

filings a written notice of appeal with the Clerk of the Court at the Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within sixty days from the date of entry of judgment. Because the Petitioner has failed to demonstrate “a substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), pursuant to Federal Rule of Appellate Procedure 22(b), this Court declines to issue a certificate of appealability. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk is **DIRECTED** to forward a copy of this Order to the Petitioner and counsel of record for the Respondent.

It is so **ORDERED**.



Arenda Wright Allen
United States District Judge

Norfolk, Virginia
Date: *4.25.16*